IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 197 of 1993

with

CRIMINAL APPEAL No 201 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

H K AGRAWAL

Appearance:

MR IM PANDYA, APP, for Appellant-State

MR HARSHAD K PATEL for MR AR THACKER for Respondent

CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

Date of decision: 26/11/2004

COMMON ORAL JUDGEMENT

Abovenumbered appeals filed under Section 378 of the Code of Criminal Procedure, 1973 are directed against judgment dated October 14, 1992 rendered by the learned Judicial Magistrate, First Class, Talaja, in Criminal Case No.378 of 1989 and Criminal Case No.379 of 1989, which were consolidated, by which the respondent is acquitted of the offence punishable under Section 92 of the Factories Act, 1948 ["The Act" for short].

2. M/s. J.M.Industries is a factory within the meaning of the provisions of The Act, and the respondent is the occupier of the same. The factory is located on Plot No.29 of Ship Breaking Yard, Alang, where activity of shipbreaking is going on. On April 15, 1989, one Air-Tank weighing about 5 to 6 tonnes was required to be brought down from a ship with the help of a winch machine. The tank was at a height of 60 to 65 feet from Sea level. Winch or Windlass is a powerful machine employing a revolving cylinder used for hauling or hoisting. The steel rope of winch machine broke into two pieces killing Subhangsinh Mithaisinh, who was engaged as a worker. The accident was notified to the Factory Inspector, who visited the factory premises of the respondent on April 16, 1989 and April 17, 1989. According to the Factory Inspector, the respondent failed to notify the accident within twelve hours of the accident though so required to be notified by Rule 103(2) of the Gujarat Factory Rules, 1963, which is punishable under Section 92 of the Factories Act, 1948. Therefore, he instituted Criminal Case No. 378 of 1989 in the Court of learned Judicial Magistrate, First Class, Talaja and prayed the Court to convict the respondent under Section 92 of the said Act.

2.1 It was also the case of the Factory Inspector that rope of the winch machine was not properly maintained though so required by Section 29(1)(a)(ii) of the Act which is punishable under Section 92 of the Act. Therefore, he instituted Criminal Case No.379 of 1989 in the Court of learned Judicial Magistrate, First Class, Talaja and prayed the Court to convict the respondent under Section 92 of the said Act.

2.2 As both the complaints were arising out of one incident, they were consolidated and tried in summary way as required by the provisions of the Code of Criminal Procedure, 1973.

3. In order to prove his case, Factory Inspector examined himself at Exh.5 and also examined expert who

had issued test-report regarding wire used in winch machine at Exh.16. Further, Dr.Arvindkumar Popatlal Maradia was examined at Exh.21 to prove that Subhangsinh Mithaisinh died an accidental death. The complainant also produced documentary evidence such as notification of accident made by the respondent in Form No.21 at Exh.8, report of the expert at Exh.14 etc., in support of his case against the respondent. After recording of evidence adduced by the complainant was over, further statement of the respondent was recorded.

4. On appreciation of evidence adduced by the complainant, the learned Judicial Magistrate, First Class, Talaja has acquitted the respondent by judgment dated October 14, 1992, giving rise to above-numbered two appeals.

5. This Court has heard Mr.I.M.Pandya, learned A.P.P. and Mr.Harshad K.Patel, learned advocate, who has appeared on behalf of Mr.A.R.Thacker, learned counsel of the respondent on record, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. After analysing, sifting and assessing the evidence on record with particular reference to its trustworthiness and truthfulness by a process of dispassionate judicial scrutiny, this Court finds that the finding recorded by the learned Magistrate that the complainant has failed to prove breach of Rule 103(2) of the Gujarat Factory Rules, 1963 can hardly be regarded as erroneous. The evidence of complainant himself shows that necessary report regarding accident in prescribed form was forwarded to his Office by the respondent on the day of the accident itself. The fact that accident was notified to the Office of the complainant within twelve hours of the accident is admitted by the complainant in his cross-examination. The learned Magistrate has recorded extremely nice and appealing reasons for coming to the conclusion that breach of Rule 103(2) of the Gujarat Factory Rules, 1963 is not established. Those reasons are to be found in Para-14 of the judgment with which this Court fully concurs. Therefore, Criminal Appeal No.197 of 1993 directed against acquittal of the respondent for alleged breach of Rule 103(2) of the Rules is liable to be dismissed.

6. Similarly, the finding recorded by the learned Magistrate that the complainant has failed to establish that the rope of winch machine was not properly

maintained is eminently just and no case is made out by the learned A.P.P. to interfere with the same. The testimony of expert examined by the complainant to prove his case read with the certificate issued by him favours the respondent and it is rightly observed by the learned Magistrate that neither testimony of the said expert, nor the contents of certificate issued by him support the case of the complainant. The certificate would indicate that the rope of winch machine was examined/tested by the expert before two months of the accident. As per the assertion made by the expert in his examination-in-chief, the report is valid for a period of one year. Though the complainant had visited the factory of the respondent on two dates, no summary of findings noticed by him was prepared. No photograph of the rope in question was taken, nor panchnama indicating condition of the rope was prepared. As per the testimony of the expert, the winch machine was capable of handling a tank having weight of 10 tonnes, whereas the weight of the tank which was sought to be brought down was 5 to 6 tonnes. The learned Magistrate has noticed several lapses committed by the complainant while recording the finding that the complainant has failed to prove that rope of winch machine was not properly maintained. Those findings are to be found in Para-15 of the impugned judgment, with which this Court concurs.

7. This is an acquittal appeal in which Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, this Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and this Court is of the opinion that expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandini Devi & ors. v. Bijendra Narain Chaudhary, A.I.R. 1967 S.C. 1124, and (2) State of Karnataka v. Hema Reddy and another, A.I.R. 1981 S.C. 1417. On overall appreciation of evidence, this Court is satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondent. Suffice it to say that the learned

Magistrate has given cogent and convincing reasons for acquitting the respondent. The learned Additional Public Prosecutor has failed to convince this Court to take the view contrary to the one already taken by the learned Magistrate and, therefore, both the appeals are liable to be dismissed.

For the foregoing reasons, both the appeals fail and are dismissed.

(J.M.Panchal,J.)

(patel)